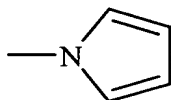


additional O, S or N heteroatoms. The Examiner's characterization of W being a 5- or 6-membered aromatic ring does not necessarily comport to the definition of W in the specification and claims. The applicants do not claim that W is a 5- or 6-membered aromatic ring but rather that W can be a saturated or unsaturated 5- or 6-membered ring containing a nitrogen atom attached to the 4-position of the pyridine ring. The applicants interpret the rejection as pertaining to compounds wherein $-NR_1R_2$ correspond to a substituent like pyrrole.



The Examiner has cited factors to be considered in determining whether a disclosure is enabling. These include: (1) the nature of the invention; (2) the state of the prior art; (3) the relative skill of those in the art; (4) the predictability or unpredictability of the art; (5) the breadth of the claims; (6) the amount of direction or guidance presented; (7) the presence or absence of working examples; and (8) the quantity of experimentation necessary.

The Amount of Direction or Guidance Presented:

Contrary to the Examiner's assertion that no guidance is given in the disclosure on how to use the invention successfully, the disclosure at page 10 lines 23-25 teaches that these materials can be made by reacting the corresponding 4-halopyridine-2-carboxylate with a substituted amine.

The State of Prior Art:

U.S. Patent 6,297,197 B1 ('197) and U.S. Patent 6,784,137 B2 ('137), which disclose similar herbicidal compounds, contain exactly the same claim language and teachings of how these materials can be made. Thus, this disclosure has been found acceptable by two other examiners. Furthermore, in '197, Example 17 specifically describes the preparation of corresponding 4-substituted aminopicolinates including the 4-pyrrolidino and 4-pyrrolo analogs (column 16 lines 34-37). While the present application may not have working examples of how to prepare these compounds, the prior art cited in the background section does.

Relative Skill of Those in the Art:

The procedures described at page 10 lines 23-25 of the present specification and exemplified in Example 17 E of '197 are examples of nucleophilic aromatic substitution reactions and are well-known to those of ordinary skill in the art; see for example, the textbooks "Organic Chemistry" by Morrison and Boyd, 6th Ed. p. 1069-1071 (1992) and "Advanced Organic Chemistry" by Smith and March, 5th Ed. p. 501-502; 864-865 (2001).

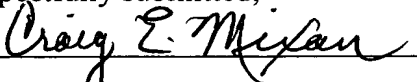
Predictability or Unpredictability of the Art:

The Examiner's assertion that the method of controlling undesired vegetation cannot be predicted is correct, particularly in cases where the chemicals differ radically in their properties. But in the case in point, the compounds in question where $-NR_1R_2$ taken together can be a 5- or 6-membered saturated or unsaturated ring are not radically different from when R_1 and R_2 are independently C_1 - C_6 alkyl or C_3 - C_6 alkenyl. The compounds are cyclic analogs. The similar herbicidal activity of the acyclic and cyclic analogs is demonstrated in '197; see Tables 1 and 6 where the post-emergent and pre-emergent activity of the pyrrolidino (36) and pyrrolo (37) compounds are very similar to their non-cyclized analogs (26-35).

Based on the above remarks, the applicants do not believe that the facts support the Examiner's contention that one skilled in the art would have to go through undue experimentation to make or use the presently claimed invention. Rather, analysis of most of the factors to be considered in determining whether a disclosure is enabled suggests that the present application complies with the requirements of 35 U.S.C. § 112, first paragraph.

Reconsideration of this application and its allowance are respectfully submitted.

Respectfully submitted,



Craig E. Mixan
Registration No. 32,709
Phone: (317) 337-4812
9330 Zionsville Road
Indianapolis, Indiana 46268